



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR  
ATTORNEY GENERAL

September 24, 1965

Honorable R. A. Stallings  
County Attorney  
Fort Bend County  
Richmond, Texas

Opinion No. C-515

Re: Whether the operator's  
license of a defendant granted  
probation under the provisions  
of the Misdemeanor Probation  
Law of 1965 for the first  
offense of driving a motor  
vehicle while intoxicated is  
automatically suspended.

Dear Mr. Stallings:

In your opinion request you ask if a driver's license is automatically suspended when a person has been convicted of the misdemeanor offense of driving while intoxicated, first offense, and has been granted probation under the terms of the Misdemeanor Probation Law of 1965, Acts 1965, 59th Leg., Ch. 164, p. 346. This question presupposes that said Misdemeanor Probation Law of 1965 applies to driving while intoxicated, first offense, and that a person convicted of said offense is eligible for probation under the terms thereof.

Section 3(a) of said Act provides in part as follows:

"A defendant who has been found  
guilty of a misdemeanor wherein the  
maximum permissible punishment is by  
confinement in jail or by a fine in  
excess of \$200 may be granted proba-  
tion if:

". . ." (Emphasis added)

Adherence to the strict letter of this provision would mean that misdemeanor probation may be granted only where the maximum permissible punishment is (1) by confinement in jail or (2) by a fine in excess of \$200, and that when both confinement in jail and a fine are permitted or required, the Act would not apply.

The purpose of the Misdemeanor Probation Law of 1965 was to extend the benefits of probation to those persons convicted of certain misdemeanor offenses. Heretofore, the benefits of probation have been available only to those persons convicted of felony offenses. Section 3(a) of said Act was put in as a

bottom limit for the granting of probation so that probation could only be granted to those persons convicted of misdemeanor offenses of a more serious nature and to prevent our courts from being cluttered with probation requests in mere trivial matters.

If a strict interpretation of this Act is made, however, then we will arrive at an absurd and unjust result. First, Section 3(a) would allow a hiatus from probation for lesser misdemeanor offenses to probation for felony offenses while no probation could be given for more serious misdemeanor offenses. The absurdity of such a strict construction is more apparent in Sections 3(a)(2) and 3(c), for the strict interpretation of these Sections would mean that a person who has previously been convicted of a misdemeanor offense, wherein punishment by confinement in jail only is allowed, would not be eligible for future probation while a person who has previously been convicted of a misdemeanor offense, wherein confinement in jail and a fine of less than \$200 is permissible, would be eligible for a probated sentence. Such a result would be one neither intended nor anticipated by the Legislature and should not be attributed to them.

In Magnolia Petroleum Co. v. Walker, 83 S.W. 929, our Supreme Court held:

" . . . 'Where, however, the language of the statute is of doubtful meaning, or where an adherence to the strict letter would lead to injustice, to absurdity, or to contradictory provisions, the duty devolves upon the court of ascertaining the true meaning. If the intentions of the Legislature cannot be discovered, it is the duty of the court to give the statute a reasonable construction, consistent with the general principles of law.' 59 C.J., p. 957, § 569; Empire Gas & Fuel Co. v. State of Texas, supra." (Emphasis added)

We, therefore, hold that the Misdemeanor Probation Law of 1965 applies to all misdemeanors wherein a permissible punishment upon conviction is: (1) by confinement in jail; (2) by a fine in excess of \$200; (3) by confinement in jail plus a fine of any amount.

We are further supported in our conclusion by the recent decision of the Supreme Court of Texas in Sweeny Hospital District v. Carr, 378 S.W.2d 40 (Tex.Sup. 1964):

"The courts of this state have on occasion added words or phrases to statutes when necessary to give effect to legislative intent, . . ."

Section 4(a) of the Misdemeanor Probation Law of 1965 is clear and unambiguous. It states:

"When a defendant is granted probation under the terms of this Act, the finding of guilty does not become final, nor may the court render judgment thereon, except as provided in Section 6 of this Act." (Emphasis added)

Article 6687b, Section 24(a)2, V.C.S., provides for the automatic suspension of the license of any person upon final conviction of driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs.

Since the probated judgment is not a final conviction, the driver's license is not automatically suspended.

Section 6(b) provides:

"On the date the probation is revoked, the finding of guilty becomes final and the court shall render judgment thereon against the defendant...."

In the event that probation is revoked and the judgment becomes final in accordance with this provision, the driver's license is automatically suspended at such time.

We are not unmindful of the provision of Article 6687b, Section 25(c), V.C.S., which reads as follows:

"For the purpose of this Act, the term 'conviction' shall mean a final conviction. Also, for the purpose of this Act, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

"Provided, however, that in case of conviction for any of the offenses enumerated in paragraph (a) of Section 24 of this Act,

and the sentence of the court having been suspended as provided in the Statutes, such suspended sentence shall not mitigate against the suspension of the operator's, commercial operator's, or chauffeur's license of the person convicted." (Emphasis added)

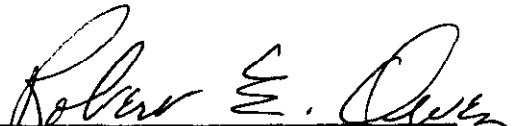
It is well settled that there is no sentence in a misdemeanor case. Since this proviso applies only where the sentence of the court is suspended, it has no application to a misdemeanor case.

S U M M A R Y

A driver's license is not automatically suspended when a person is convicted of driving while intoxicated, first offense, and placed on probation under the terms of the Misdemeanor Probation Law of 1965.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By   
Robert E. Owen  
Assistant Attorney General

REO:sss

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
W. O. Schultz  
John Banks  
Robert W. Norris  
John Reeves

APPROVED FOR THE ATTORNEY GENERAL  
BY: T. B. Wright